

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RONALD D. BURSTON, JR.)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:12-CV-29-LMB
)	
DANIEL SMITH,)	
)	
Defendant.)	

**DEFENDANT SMITH'S OPPOSITION TO PLAINTIFF'S MOTION
FOR APPOINTMENT OF COUNSEL**

Defendant Daniel Smith, by and through his undersigned counsel,
hereby responds to Plaintiff's Motion for Appointment of Counsel as follows:

1. Plaintiff filed a motion for appointment of counsel [Doc. 15] pn
November 1, 2012.
2. There is no statutory or constitutional right to appointment of
counsel in a civil case. *Nelson v. Redfield Lithographic Printing*, 728 F.2d
1003, 1004 (8th Cir. 1984). Rather, pursuant to 28 U.S.C. §1915(d), courts
are empowered to appoint counsel when the circumstances so warrant. In
considering a motion for appointment of counsel, the court should determine
whether the nature of the litigation is such that plaintiff, as well as the court
will benefit from the assistance of counsel. *Id.* at 1005. Relevant factors

include the factual complexity of the case, the ability of the indigent to investigate the facts, the existence of conflicting testimony, the ability of the indigent to present his claim, and the complexity of the legal issues.

Abdullah v. Gunter, 949 F.2d 1032, 1035 (8th Cir. 1991).

3. In the present case, the facts are relatively straightforward and the legal issues are not complex. Thus, Plaintiff should be able to adequately represent his own interests during the litigation, and in fact has repeatedly demonstrated the ability to do so. Consequently, the Court should deny Plaintiff's Motion for Appointment of Counsel.

WHEREFORE, Defendant Daniel Smith respectfully requests that this Court issue its Order denying Plaintiff's Motion for Appointment of Counsel and for such other relief as this Court deems just and proper.

Respectfully submitted,

CHRIS KOSTER

Attorney General

/s/ Christopher R. Hoell

Christopher R. Hoell, #54011

Assistant Attorney General

PO Box 861

St. Louis, MO 63188

(314) 340-7861 telephone

(314) 340-7029 facsimile

Attorneys for Defendant Daniel Smith

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed, first class, postage prepaid this 7th day of November, 2012, to:

Ronald D. Burston, Jr.
#513412
Northeast Correctional Center
13698 Airport Road
Bowling Green, MO 63334
Plaintiff pro se

/s/ Christopher R. Hoell